

**Letter of Findings Number: 03-20140311P
Tax Administration
For Tax Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

STATEMENT OF FACTS

Taxpayer is a business which operates in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayer had not timely filed a form WH-3 (Annual Withholding Reconciliation Form). The Department issued proposed assessments for a ten percent negligence penalty and interest. Taxpayer protested the imposition of the penalty. An administrative hearing was held and this letter of findings results. Further facts will be supplied as required.

I. Tax Administration—Penalty.

DISCUSSION

The Department issued proposed assessment for penalty on failure to timely file a form WH-3 for tax year 2012. Taxpayer protests assessment of a negligence penalty because of technical issues which Taxpayer worked diligently to resolve and for which it had sought an extension in advance. Taxpayer protests the imposition of penalty and requests a waiver of that penalty.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

(a) If a person:

...

(5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;
the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added).

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. (Emphasis added).

The Department considered Taxpayer's failure to timely file the form WH-3 constituted negligence and so imposed penalty under IC § 6-8.1-10-2.1(a). In the administrative hearing, Taxpayer demonstrated that it was unable to file the form WH-3 due to computer difficulties. Due to a change in law, Taxpayer tried, for the first time, to file the form WH-3 electronically. Taxpayer found the files would not load or transmit to the Department in advance of the due date, and obtained an extension. Taxpayer worked to resolve all the technical issues for tax year 2012 and all future tax periods. Even though Taxpayer overran the extension, as a result of the protest process, Taxpayer has affirmatively established that it acted reasonably in its efforts to comply with Indiana's tax filing requirements, as required by [45 IAC 15-11-2\(c\)](#). The penalty will be waived.

FINDING

Taxpayer's protest is sustained.

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